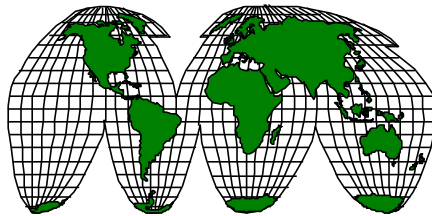
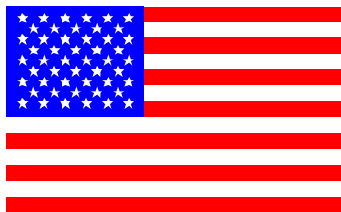
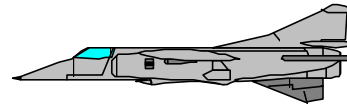


Export Control at NASA

Presentation to
MIDEX & MO Preproposal Conference
University of Maryland Conference Center



10 August 2001



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Here's an important principle: *Export Control Violations are Federal Crimes*



⌘ Protect Yourself: The Export Laws and Regulations Have Teeth and Can “Bite”

☑ ITAR Criminal and Civil Penalties

- ☑ Fine of up to \$1 million per violation
- ☑ Imprisonment - 10 years per violation

☑ EAR Criminal and Civil Penalties

- ☑ Fine of \$100K+
- ☑ Imprisonment for up to 10 years

⌘ That's one reason why You need to be concerned about Your export practices

Why You Must be Concerned About Your Export Practices



- ⌘ Exporting is a “privilege”, *not a “right”*
- ⌘ Export “privileges” can be revoked, precluding our ability to conduct international activities.
- ⌘ The US holds significant expertise in space launch vehicle, satellites and other advanced/controlled technologies that others would love to have.
- ⌘ And don’t forget, export control violations can -- and do -- lead to criminal prosecution

What is an “Export”?



An Export Is...

⌘ the transfer of anything to a “FOREIGN PERSON” (or a foreign destination) by any means, anywhere, anytime, *or* a transfer to a “U.S. PERSON” with knowledge that the item will be further transferred to a “FOREIGN PERSON”.

Therefore, it's all of the following and more:



- ⌘ Placing information on the World-Wide-Web, making data available through ftp sites, etc.
- ⌘ Placing information in the Public Domain
- ⌘ Verbal discussions w/foreign nationals or presentations to groups that include foreign nationals
- ⌘ Handcarrying items outside the U.S.
- ⌘ Traditional “Shipments” of items outside the U.S.
- ⌘ Mailing, faxing, e-mailing items outside the U.S. or to foreign nationals within the U.S.
- ⌘ etc., etc.

Only Certain Exports Are Subject to Controls: *Public Domain v. Export Controlled*

- ⌘ Information in the Public Domain is NOT subject to Export Control
- ⌘ Items subject to Export Control are restricted in their dissemination
 - ☑ May require a license
 - ☑ May be eligible for a license exception/exemption
- ⌘ Just because it's commercial off-the-shelf (COTS) does not mean it's not export-controlled

Export Control Definitions



⌘ What is Export Controlled Technical Data?

- ✕ **information** which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of “**defense articles**”
- ✕ **classified** information related to “**defense articles**”
- ✕ **information** covered by an invention secrecy order
- ✕ **software** directly related to “**defense articles**”.

22 CFR § 120.10

Export Control Definitions



⌘ Controlled Technical Data (cont'd) -

⊗ does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the “public domain”.

⊗ does not include basic marketing information on function or purpose or general system descriptions of “Defense Articles”.

. . . such information is in the public domain and not subject to export control

Export Control Definitions



⌘ What is Public Domain information?

Information which is published and which is generally accessible or available to the public:

- ☒ through sales at newsstands and bookstores;
- ☒ through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
- ☒ through second class mailing privileges granted by the U.S. government

22 CFR § 120.11

Export Control Definitions



⌘ Public Domain (cont'd)

- ☒ at libraries open to the public or from which the public can obtain documents;
- ☒ through patents available at any patent office
- ☒ through unlimited distribution at a conference, meeting, seminar, trade show or exhibition,, generally accessible to the public, in the United States;

Export Control Definitions



⌘ Public Domain (cont'd)

- ☒ through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency.
- ☒ through **fundamental research** in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.

Export Control Definitions



⌘ Public Domain (cont'd)

⊠ **Fundamental research** is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. government access and dissemination controls.

Export Control Definitions



⌘ Public Domain (cont'd)

☒ University research will *not* be considered “**fundamental research**” if:

- the University or its researchers **accept other restrictions on publication of scientific and technical information resulting from the project or activity**, or
- the research is funded by the U.S. government and **specific access and dissemination controls protecting information resulting from the research are applicable.**

NATIONAL AERONAUTICS AND SPACE ACT OF 1958, AS AMENDED



- ⌘ "The Administration shall provide for the widest practicable and appropriate dissemination of information concerning it's activities and the results thereof" 42 U.S.C. § 2473(a)(3)
- ⌘ Although NASA has a mandate to disseminate knowledge, it must do so appropriately, and in compliance with the Export Control laws
- ⌘ That's what the Export Control Program is all about

ADMINISTRATOR'S EXPORT CONTROL POLICY STATEMENT



⌘ "As a U.S. Government Agency on the forefront of technological development and international cooperation in the fields of space, aeronautics, and science, the National Aeronautics and Space Administration will strive to fulfill its mission for cooperative international research and civil space development in harmony with the export control laws and regulations of the United States. Due to heightened proliferation challenges facing the United States and the world, including risks posed by the spread of missile technologies and weapons of mass destruction, and in view of the significant criminal, civil, and administrative penalties that may affect the Agency and its employees as a result of a failure to comply with U.S. export control laws and regulations, **it is the responsibility of every NASA official and employee to ensure that the export control policies of the United States, including nonproliferation objectives, are fully observed in the pursuit of NASA's international mission.**"

⌘ Daniel S. Goldin, Administrator
National Aeronautics and Space Administration

How Do Export Controls Affect Me?



- ⌘ Understand the Scope of the International Cooperation and NASA's Responsibilities
- ⌘ Be Aware and Think before you “export”
- ⌘ Don't be intimidated by the rules - help is available, ask for it



Before Effecting an Export...

- ⌘ Understand the authority and the necessity for the “export” -- International Agreement, contract, etc.
- ⌘ “Classify” the item to be exported (hardware, software, technical data) -- is it under State Department (ITAR) or Commerce Department (EAR) jurisdiction?
- ⌘ Determine if the item is eligible for an exception/exemption to obtaining an export license, and if not,
- ⌘ Apply for and obtain an export license
- ⌘ Cite exception/exemption or license authority on export paperwork and comply with requirements of regulations, license and/or agreement

The International Traffic in Arms Regulations (ITAR)

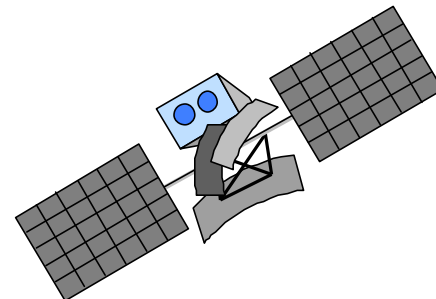
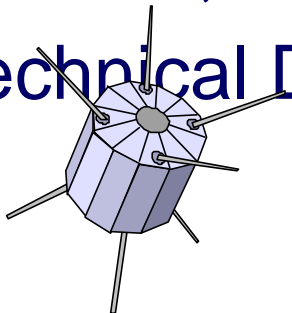
- ⌘ Regulations which control the export of goods and technical data on the United States Munitions List (USML) and certain items on the Missile Technology Control Regime (MTCR) Annex.**
- ⌘ USML items are mainly “military” in nature, with a limited number of “dual-use” items.**
- ⌘ 22 CFR 120-130**

***Updated via Federal Register Notices
<http://www.pmdtc.org/>**

USML Example

Category XV: “Spacecraft and Associated Equipment”

- ☑ All spacecraft (except the International Space Station)
- ☑ Certain GPS Receivers
- ☑ Certain Radiation-Hardened Microprocessors
- ☑ Uniquely Designed, Modified, Configured Systems, Pieces and Parts for Above
- ☑ Technical Data for Above



The Export Administration Regulations (EAR)

- ⌘ Regulations which control the export of goods and technical data on the Commerce Control List (CCL), including certain items on the Missile Technology Control Regime Annex.**
- ⌘ Items on the CCL are typically referred to as “dual-use” items.**
- ⌘ 15 CFR 730-774**

***Updated via Federal Register Notices
<http://bxa.fedworld.gov>**

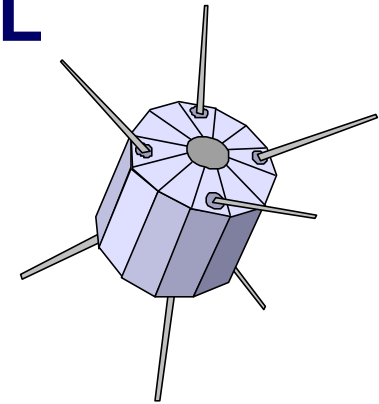
CCL Example

⌘ ECCN 9A004: “Spacecraft”

☑ The International Space Station*

☒ *Technical Data at the Detailed Design, Development, Manufacturing and Production Level remain subject to the jurisdiction of the Department of State/ITAR

☑ Various Other Pieces and Parts that have been transferred from the USML



Bottom Line



⌘ Everyone working with NASA -- including NASA employees and contractors -- has a responsibility to observe U.S. export laws and regulations, to comply with NASA's Export Control Program, and to be a “responsible” exporter

For More Information . . .

⌘ U.S. Department of State, Office of Defense
Trade Controls: 202-663-2700

<http://www.pmdtc.org/>

⌘ U.S. Department of Commerce, Bureau of
Export Administration: 202-482-0436

<http://www.bxa.doc.gov/>

⌘ NASA Headquarters Export Control Officials:
John Hall or Paula Geisz - 202-358-0330

<http://www.hq.nasa.gov/office/codei/nasaecp>

⌘ NPD 2110.1: Foreign Access to NASA
Technology Utilization Material

